IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1162 OF 2006

Rampratap Ramkrupal Singh .. Petitioner
v/s.
The State of Maharashtra and others .. Respondents

Mr. A.A. Mirza for the petitioner.
Mr. D.P. Adsule, Additional Public Prosecutor for the respondents.

CORAM : S.C. DHARMADHIKARI, J.
DATED : 27TH APRIL, 2007

P.C.

The petitioner is challenging the orders passed in the externment proceedings.

2. By the order dated 28th March, 2006, the third respondent-Deputy Commissioner of Police, Zone-11, Mumbai in exercise of his powers under section 56(1) of the Bombay Police Act, 1951 passed an order of externment against the petitioner externing him and directing him to remove himself from Greater Bombay, Navi Mumbai, Thane and Raigad districts.

3. The order dated 28th March, 2006 has been confirmed by the Appellate Authority vide its order dated 2nd May, 2006.

4. Aggrieved and dissatisfied with these orders, the present

petition under Articles 226 and 227 of the Constitution of India has been instituted.

5. The learned counsel appearing for the petitioner would urge that the impugned orders are exfacie excessive, arbitrary and illegal. He submits that by the orders under challenge, the petitioner has been externed and directed to remove himself from Mumbai, Navi Mumbai, Thane and Raigad districts. He submits that for the past 13 months, the petitioner has removed himself from these districts. Grave prejudice has been caused to the petitioner inasmuch as there is no application of mind on the part of the authorities as to why the petitioner needs to be externed from the above areas and districts, more so, when on the own showing of the authorities that he has been residing at Kandivali, Mumbai since number of years and the incidents alleged are of the year 2000 onwards.

6. Mr. D.P. Adsule, learned Additional Public Prosecutor appearing for the State, on the other hand submits that this court cannot reappreciate the matters before the authorities and come to a distinct conclusion, merely because in its view, the orders suffer from any infirmity or lacunae, more so, when there is enough material before the authorities in the form of statements of persons incamera which have been relied upon after giving due opportunity to the petitioner to meet the contents thereof. The petitioner was also given enough opportunity to produce such material in rebuttal as is permissible in law.

7. I am aware of the limits of writ jurisdiction. However, there is much substance in the argument of the petitioner that the impugned orders are excessive. The show-cause notice is perused by me. The show-cause notice very clearly states that the petitioner is residing at Kandivali (West), Mumbai. He has been indulging in the same activities and incidents enlisted in the show-cause notice have occurred in Kandivali (West) area. His activities, as alleged, are restricted to Kandivali (West) alone. Even the incidents which have allegedly taken place involving persons including those who have given incamera statements have taken place at Kandivali. In the order of the Detaining Authority so also the Appellate Authority, there is complete non-application of mind inasmuch as no reference has been made to the prerequisites in law for externing the petitioner from the areas in question. Needless to state that the authorities have to satisfy themselves not only about the other prerequisites but also as to whether it is necessary to extern the person concerned from the areas which are mentioned in the show-cause notice. It has come to my notice in several cases that the show-cause notice mentions mechanically the areas and the list commences not only from Greater Bombay but at times extends to Nasik and other districts. Such a mechanical approach on the part of the authorities shows that they are unaware of their obligation and duty in law. The very purpose and object of conferring a power to extern a person is defeated when the authorities do not apply their mind to such vital aspects. There is therefore, no alternative but to record a conclusion that the orders are excessive and vitiated by total non-application of mind.

8. After perusing the petition and the Annexures thereto including the impugned orders, I am satisfied that there was no material before the authorities to pass an order of externment of the petitioner from the areas mentioned above. Apart from the fact that there is non-application of mind, the order is exfacie excessive. In such circumstances, there is no alternative but to quash and set aside the impugned orders. Consequently, the same are quashed and set aside. Rule is made absolute in terms of prayer clauses (b) and (c).

(S.C. DHARMADHIKARI, J.)